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ATTORNEY FOR APPELLANT:

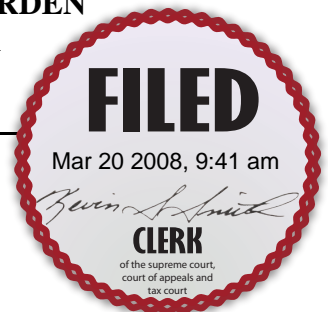
ROBERT D. KING, JR.
Indianapolis, Indiana

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**IN THE
COURT OF APPEALS OF INDIANA**



RICHARD HARPER,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A04-0707-CR-370

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Gifford, Judge
The Honorable Steven Rubick, Commissioner
Cause No. 49G04-0701-FC-13089

March 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Richard Harper pled guilty to burglary¹ as a Class C felony in exchange for the dismissal of two resisting law enforcement counts and a sentencing cap of two years executed. Harper appeals, claiming his two-year executed and two-year suspended sentence is inappropriate.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 8, 2007, Harper pled guilty to burglary. The trial court took a factual basis and sentenced Harper to two years executed and two years suspended and ordered Harper to pay restitution. In sentencing Harper, the trial court acknowledged his criminal history and his failure to appear for his initial guilty plea hearing and sentencing as aggravators and did not recognize any mitigators. Harper now appeals.

DISCUSSION AND DECISION

Harper contends that the trial court abused its sentencing discretion, and that his sentence is inappropriate. A sentencing decision is within the sound discretion of the trial court. *Edwards v. State*, 842 N.E.2d 849, 854 (Ind. Ct. App. 2006), *trans. denied* (citing *Jones v. State*, 790 N.E.2d 536, 539 (Ind. Ct. App. 2003)). If there is any sentencing discretion left to the trial court after a plea is entered, we still must review the trial court's exercise of its discretion. *Childress v. State*, 848 N.E.2d 1073, 1078 (Ind. 2006). We can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the weight given to these reasons. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007). If the sentence imposed is lawful, this court will not reverse unless the sentence is inappropriate based on the character of the offender and the

¹ See IC 35-43-2-1.

nature of the offense. Ind. Appellate Rule 7(B); *Boner v. State*, 796 N.E.2d 1249, 1254 (Ind. Ct. App. 2003).

Harper's two-year executed and two-year suspended sentence is neither an abuse of discretion nor inappropriate. This was Harper's third burglary conviction, and he was habitual offender eligible. His criminal record alone justified his sentence. *Mitchell v. State*, 844 N.E.2d 88, 91 (Ind. 2006) (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (fact of prior convictions may always be used in consideration of defendant's sentence)). He also received a significant benefit from pleading guilty (two charges dropped). The trial court did not abuse its discretion, and we do not find Harper's sentence inappropriate.²

Affirmed.

RILEY, J., and MAY, J., concur.

² Indeed, if Harper's sentence was inappropriate, it was because it was too lenient, not too onerous.